

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS Richard Zinn, Indi and as Sole Shareholder of Excalibur Bagel & Bakery Equipment, Inc., a NJ Corp, and Excalibur Bagel & Bakery Equipment, (b) County of Residence of First Listed Plaintiff <u>Bergen</u> (EXCEPT IN U.S. PLAINTIFF CASES) (c) Attorney's (Firm Name, Address, and Telephone Number) Richard A. Joel, Joel & Joel, LLP, 496 Kinderkamack Road, Radell, New Jersey 07649 (201) 599-0588	DEFENDANTS Karin Seruga, Ind and as Sole Shareholder of Excellent Bakery Equipment Co., a NJ Corp and Excellent Bakery Equipment, Co., County of Residence of First Listed Defendant <u>Bergen</u> (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Attorneys (If Known)
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II. BASIS OF JURISDICTION (Place an "X" in One Box Only) <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only) <table><tr><td>Citizen of This State</td><td><input checked="" type="checkbox"/> 1</td><td><input checked="" type="checkbox"/> 1</td><td>Incorporated or Principal Place of Business In This State</td><td><input checked="" type="checkbox"/> 4</td><td><input checked="" type="checkbox"/> 4</td></tr><tr><td>Citizen of Another State</td><td><input type="checkbox"/> 2</td><td><input type="checkbox"/> 2</td><td>Incorporated and Principal Place of Business In Another State</td><td><input type="checkbox"/> 5</td><td><input type="checkbox"/> 5</td></tr><tr><td>Citizen or Subject of a Foreign Country</td><td><input type="checkbox"/> 3</td><td><input type="checkbox"/> 3</td><td>Foreign Nation</td><td><input type="checkbox"/> 6</td><td><input type="checkbox"/> 6</td></tr></table>	Citizen of This State	<input checked="" type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input checked="" type="checkbox"/> 4	<input checked="" type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
Citizen of This State	<input checked="" type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input checked="" type="checkbox"/> 4	<input checked="" type="checkbox"/> 4														
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5														
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6														

IV. NATURE OF SUIT (Place an "X" in One Box Only)				
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only) <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify) <input type="checkbox"/> 6 Multidistrict Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity): <u>28 USC 2201(a); 15 USC 1125 and 15 USC 1120</u> Brief description of cause: <u>Declaratory judgment seeking to invalidate trademark; unfair competition and fraudulent attempt to reg</u>

VII. REQUESTED IN COMPLAINT: <input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: <input type="checkbox"/> Yes <input type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE <u>Richard A. Joel</u> DOCKET NUMBER _____

DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY			
RECEIPT # _____	AMOUNT _____	APPLYING IFP _____	JUDGE _____
		MAG. JUDGE _____	

Richard A. Joel, Esq. (RAJ 7604)
JOEL & JOEL, LLP
496 Kinderkamack Road
Oradell, New Jersey 07649
(201) 599-0588
Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

RICHARD ZINN, Individually and as Sole
Shareholder of Excalibur Bagel & Bakery
Equipment, Inc., a New Jersey Corporation,
and Excalibur Bagel & Bakery Equipment,
Inc., a New Jersey Corporation

Plaintiffs,

vs.

KARIN SERUGA, Individually and as Sole
Shareholder of Excellent Bakery Equipment
Co., a New Jersey Corporation, and Excellent
Bakery Equipment Co., a New Jersey
Corporation

Defendants.

CASE NO. _____ cv _____

COMPLAINT

Plaintiffs, Richard Zinn, Individually and as Sole Shareholder of Excalibur Bagel & Bakery Equipment Co., a New Jersey Corporation, and Excalibur Bagel & Bakery Equipment Co., a New Jersey Corporation, by and through their attorneys, Joel & Joel, LLP, by way of Complaint against Defendants Karin Seruga, Individually and as Sole Shareholder of Excellent Bakery Equipment Co., a New Jersey Corporation, and Excellent Bakery Equipment Co., a New Jersey Corporation, allege as follows:

SUBSTANCE OF THE ACTION

1. This is an action for a declaratory judgment under 28 U.S.C. § 2201(a) seeking to invalidate the trademark, “ARTOFEX”, having United States Patent and Trademark Office (hereinafter “USPTO”) Registration Number 231276. This action also requests a finding of civil liability under 15 U.S.C. § 1125 for unfair competition, and under 15 U.S.C. § 1120 for fraudulent attempts to register the trademark, “ARTOFEX” in stylized form as well as common law fraud and pendent state claims.

PARTIES AND JURISDICTION

2. Plaintiff, Richard Zinn, is a citizen of New Jersey and the sole shareholder of Excalibur Bagel & Bakery Equipment, Inc., a New Jersey Corporation. Mr. Zinn’s address is Richard Zinn c/o Excalibur Bagel & Bakery Equipment, Inc., 611 Valley Health Plaza, Paramus, New Jersey 07652. Plaintiff, Excalibur Bagel & Bakery Equipment, Inc. (hereinafter “Excalibur”), is a corporation organized and existing under the laws of the State of New Jersey. Plaintiff maintains offices at 611 Valley Health Plaza, Paramus, New Jersey 07652.

3. Defendant, Karin Seruga, is a citizen of New Jersey and the sole shareholder of Excellent Bakery Equipment Co., a New Jersey Corporation. Defendant Seruga resides at 36 Louis Drive, Montville, New Jersey.

4. Defendant, Excellent Bakery Equipment Co. (hereinafter “Excellent”), is a corporation organized and existing under the laws of the State of New Jersey. Defendant maintains offices at 315 Fairfield Road, Fairfield, New Jersey 07004.

5. The conduct out of which Plaintiffs' claims arose occurred in the State of New Jersey and involves a federal trademark, ARTOFEX, Registration No. 231272, and a pending application, SN 76/545438, for the mark ARTOFEX as well as federal unfair competition claims.

VENUE

6. Venue is properly in this District, pursuant to 28 U.S.C. § 1391(a), since all of the parties are present in the District.

COUNT I

Defendant's Ownership of the Mark Artofex is Fraudulent

7. Plaintiffs repeat and re-allege the allegations of Paragraphs 1-7 of the Complaint as though fully stated herein.

8. On August 16, 1927, F. Aeschbach S.A., a Joint Stock Company with Swiss citizenship, registered the ARTOFEX mark as Registration 231276 in the United States (Exhibit 1).

9. On May 24, 1989, Registration 231276 was assigned (hereinafter "Assignment 1") by F. Aeschbach AG, a Joint Stock Company with Swiss citizenship, to Artofex AG, another Joint Stock Company with Swiss citizenship (Exhibit 1).

10. On February 28, 1995, Registration 231276 was assigned (hereinafter "Assignment 2") by Artofex AG, a corporation with citizenship in the United Kingdom, to Artofex Engineering Works Limited, another corporation with citizenship in the United Kingdom (Exhibit 1).

11. There are no assignments of Registration 231276 back to F. Aeschbach AG or F. Aeschbach S.A., both Swiss companies.

12. Neither F. Aeschbach AG (Swiss), nor F. Aeschbach S.A. (Swiss) had legal ownership of the ARTOFEX mark to make any subsequent assignments.

13. Artofex AG (Swiss) is not the same company as Artofex AG (United Kingdom), nor is there any assignment of the ARTOFEX mark to Artofex AG (United Kingdom).

14. On October 15, 2003, Registration 231276 was assigned (hereinafter "Assignment 3") by F. Aeschbach S.A., an individual with United States citizenship, to Defendant Karin Seruga, an individual with United States citizenship (Exhibit 1).

15. On April 15, 2004, Registration 231276 was assigned (hereinafter "Assignment 4") by F. Aeschbach S.A., a Joint Stock Company with Swiss citizenship, to Defendant Karin Seruga, an individual with United States citizenship (Exhibit 1).

16. Defendant Karin Seruga obtained title to Registration 231276 fraudulently and Assignments 2 through 4 are invalid.

17. Plaintiffs sustained damages as a consequence of Karin Seruga's fraudulent procurement of ownership to Registration 231276 and her attempts to assert trademark rights against plaintiffs which she does not own.

COUNT II

Defendant Procured Ownership by False Means and the Trademark is Invalid

18. Plaintiffs repeat and re-allege the allegations of Paragraphs 1-18 of the Complaint as though fully stated herein.

19. Assignment 1 assigned Artofex AG (Swiss) the entire interest and good will of the business (Exhibit 1).

20. Assignment 2 did not assign Artofex Engineering Works Limited (United Kingdom) the good will of the business (Exhibit 1).

21. Assignment 3 did not assign Defendant Karin Seruga the good will of the business and incorrectly listed F. Aeschbach S.A. as an individual with United States citizenship (Exhibit 1).

22. Assignment 4 did not assign Defendant Karin Seruga the good will of the business and listed F. Aeschbach S.A. (Swiss) as the assignor of the trademark Artofex when in fact F. Aeschbach S.A. divested itself of ownership of the mark on May 24, 1986 by Assignment 1 (Exhibit 1).

23. There was no assignment of the requisite “good will” with the mark, ARTOFEX, to comply with 15 U.S.C. § 1060.

24. Defendant Karin Seruga further procured the assignments of Registration 231276 fraudulently.

25. The naked assignment of the ARTOFEX trademark without the good will of the business resulted in an invalid trademark.

26. Plaintiffs sustained damages as a consequence of Karin Seruga’s fraudulent assignment of Registration 231276 and the assertion of trademark rights against plaintiffs on an invalid trademark.

COUNT III

Plaintiffs Request Judgment Declaring the Mark Invalid

27. Plaintiffs repeat and re-allege the allegations of Paragraphs 1-27 of the Complaint as though fully stated herein.

28. On December 8, 2003, Defendants, through counsel, sent a letter to Plaintiffs’ counsel (Exhibit 2) directing Plaintiffs to cease and desist further use of the ARTOFEX mark.

Defendants threatened Plaintiffs with liability for alleged violation of Defendants' rights under federal law.

29. On December 8, 2003, defendant Seruga had no ownership rights in the mark Artoflex Registration No. 231276 since the purported assignment of the mark did not take place until April 14, 2004 (Exhibit 3).

30. The threatening letter of December 8, 2003 (Exhibit 2) created a real and reasonable apprehension of liability on the part of Plaintiffs.

31. On December 31, 2003, Defendants, through counsel, sent a second letter to Plaintiffs' counsel reaffirming and further warning of an impending lawsuit if their cease and desist request was not satisfied (Exhibit 4).

32. The Artoflex mark has been used for years with impunity by various parties and without any supervision and has fallen into the public domain. The mark is invalid

COUNT IV

Breach of Contract

33. Plaintiffs repeat and re-allege the allegations of Paragraphs 1-32 of the Complaint as though fully stated herein.

34. The mark ARTOFEX has fallen into the public domain and the trademark is invalid through misuse of the mark by numerous parties without supervision.

35. Plaintiff, Richard Zinn, was formerly married to Defendant, Karin Seruga.

36. During their marriage, the parties were equal owners of Banta Machine Corp. (hereinafter "Banta") and Excelsior Industrial Equipment Co. (hereinafter "Excelsior"). Banta and Excelsior were engaged in the manufacture and sale of bakery equipment and parts.

37. On or about March 31, 1995, the activities of Banta and Excelsior were concluded and the assets of the corporations were distributed to the parties and each then established their own independent businesses.

38. Defendant Seruga established Excellent Bakery Equipment Co., a corporation in the business of manufacturing, servicing, and selling bagel and bakery equipment and parts.

39. Plaintiff Zinn established Excalibur Bagel & Bakery Co., a corporation in the business of manufacturing, servicing, and selling bagel and bakery equipment and parts.

40. Both Seruga and Zinn remain in business and compete directly with each other.

41. Defendants have deliberately engaged in a course of conduct to harass and destroy Plaintiffs.

42. Plaintiffs and defendants are presently involved in litigation in the Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-6432-04, relating to alleged breach of a Corporate Settlement Agreement regarding the use of the ARTOFEX mark, as well as other conduct allegedly interfering with business activities.

43. A declaratory judgment invalidating the mark, ARTOFEX, will clarify and settle the legal relations in issue, and afford relief from the uncertainty and controversy as part of the state proceeding.

COUNT V

Plaintiffs Deserve Judgment Declaring the Mark Artofex Invalid

44. Plaintiffs repeat and re-allege the allegations of Paragraph 1-43 of the Complaint as though fully stated herein.

45. Prior to Assignment 1 (Exhibit 1) by F. Aeschbach AG (Swiss) on May 24, 1989, F. Aeschbach S.A.(Swiss) abandoned the mark which it registered on August 16, 1927.

46. Assignment 2, 3, and 4 (Exhibit 1) are invalid because they did not assign the requisite “good will” to comply with 15 U.S.C. § 1060 nor did the assignors have ownership of the mark.

47. The invalidity of Assignments 2, 3, and 4 appears to show that ownership rights over the mark, ARTOFEX, resides in the last registrant, Artofex AG, a Swiss company.

48. Plaintiffs contend that Artofex AG (Swiss) abandoned the mark which was initially registered in 1927.

49. It is not believed that Artofex AG (Swiss) exists at this time or at the time of the alleged assignments.

50. A Declaratory judgment invalidating the mark, ARTOFEX, will clarify and settle the legal relations at issue, and afford relief from the uncertainty controversy giving rise to this proceeding.

COUNT VI

Defendant is Attempting to Obtain Registration Through Fraud

51. Plaintiffs repeat and re-allege the allegations of Paragraph 1-50 of the Complaint as though fully stated herein.

52. On September 17, 2003, despite fraudulent prior assignments of the ARTOFEX mark, Defendants filed a new trademark application (Exhibit 5) for the ARTOFEX mark, SN76/545438 with the intent to defraud the Trademark Office.

53. Defendants are falsely alleging a date of first use anywhere and a date of first use in commerce of April 4, 1927 in their application.

54. Defendants are also falsely alleging April 1, 1977 as a date of first use anywhere and first use in commerce.

55. Up until 1995, Artofex products were sold by Banta Machine Corp. (“Banta”) and Excelsior Industrial Equipment Co. (“Excelsior”) jointly owned by plaintiff Zinn and defendant Seruga. Defendant Seruga never sold Artofex products on her own prior to 1995 and certainly not in 1977 as alleged in her pending trademark application.

56. The ARTOFEX products sold by Banta and Excelsior were not sold under any license providing for quality control by a licensor. There was also no assignment to these Companies.

57. Swiss Registration 520059 dated 08/07/05 was recently granted to a company called F. Aeschbach AG in Switzerland on the mark ARTOFEX.

58. The original ARTOFEX mark, Registration No. 231276 was registered August 16, 1927 and alleged a first use of July 20, 1911 and a first use in commerce of July 20, 1911. The allegations in defendant’s application of a first use of April 4, 1927 are false.

59. Defendant Seruga is attempting to obtain a trademark registration on the mark ARTOFEX by false representation in the application in order to harm plaintiffs.

60. As part of Defendants’ trademark application of September 17, 2003, Defendants declared:

“to the best of his/her knowledge and belief, no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive..”

This declaration was false because, at the time, Defendants were well aware of Plaintiffs’ rights to use the ARTOFEX mark in commerce, pursuant to the Corporate Settlement Agreement between Plaintiffs and Defendants dated April 24, 1997 and the fact that the mark was invalid and the assignments were fraudulent.

COUNT VII

15 U.S.C. § 1125

Defendant Engaged in Unfair Competition to Injure Plaintiffs

61. Plaintiffs repeat and re-allege the allegations of Paragraphs 1-60 of the Complaint as though fully stated herein.

62. On Defendants' website, www.excellent-bagels.com, it is falsely alleged that defendants are the owners of the 1927 ARTOFEX mark.

63. Defendants promote on their website, www.excellent-bagels.com (Exhibit 6, that they are the sole U.S. Agency for Artofex mixers and parts, and that Defendants are the "only company capable of selling all new Artofex models, including the PH8, PH15, PH20 and PH30 mixers"

64. Clause 3f of their Corporate Settlement Agreement of April 24, 1997 (Exhibit 7 indicates Plaintiffs are entitled to ". . . purchase, rehabilitate, and sell Artofex equipment; and shall be entitled to make, advertise and sell parts (using the designation Triple Action Mixer and or the designation PH15, PH20, PH30) which can be used with or substituted for Artofex equipment and both parties can advertise that they are capable of servicing Artofex equipment as long as such statements are true." Consequently the statements in defendants' website are likely to confuse customers and give Defendants an unfair economic advantage.

65. Defendants state on their website, www.excellent-bagels.com, that "the other company," namely Excalibur Bagel & Bakery Equipment Inc., is lying about its ability to sell Artofex products and, is therefore, defrauding customers in the bakery industry (Exhibit 8). Such statements are misleading and likely to confuse Plaintiffs' customers and give Defendants an unfair economic advantage.

66. Defendants advertise on their website, www.excellent-bagels.com, an alleged cease and desist “order”, (Exhibit 9), instructing the “other company”, namely Excalibur Bagel & Bakery Equipment, Inc., to cease and desist use of the ARTOFEX mark. Such advertising is false and such representation is likely to confuse customers and give Defendants an unfair economic advantage.

67. Defendants advertise on their website, www.excellent-bagels.com, a fraudulent letter from PITEC, a German company, (Exhibit 10) where such letter attempts to “confirm” Defendants’ ownership rights over the ARTOFEX mark. Such letter is designed to confuse customers and give Defendants an unfair economic advantage.

68. On October 20, 1995, Plaintiff received a fraudulent letter, from Kolb, a German company, (Exhibit 11), where such letter attempted to “confirm” Defendants’ ownership rights over the ARTOFEX mark.

69. The body of both the PITEC letter, (Exhibit 10, and the Kolb letter, (Exhibit 11), are strikingly similar, and Plaintiffs allege Defendants drafted the letters themselves and fraudulently induced or conspired with PITEC and Kolb to send them to plaintiffs.

70. Plaintiffs have suffered, and continue to suffer monetary damages from Defendants’ conduct.

COUNT VIII

Product Disparagement

71. Plaintiffs repeat and re-allege the allegations of Paragraphs 1-70 of the Complaint as though fully stated herein.

72. Defendants published, on www.excellent-bagels.com, false, disparaging statements implying Plaintiffs are lying about their ability to sell Artofex products, and are therefore, defrauding customers in the baking industry.

73. Defendants published, on www.excellent-bagels.com, false, disparaging documents (Exhibits 8) that fraudulently attempt to confirm Defendants' ownership rights over the ARTOFEX mark, and negate Plaintiffs' rights to use the mark.

74. Defendants' statements and publications on www.excellent-bagels.com were motivated by Defendants' malicious intentions to monopolize the US market for Artofex-type products and services, and destroy Plaintiffs' business in the same market.

75. Defendants' false and/or misleading statements and publications on www.excellent-bagels.com disparaged plaintiff's company and products and caused Plaintiffs to sustain damages.

WHEREFORE, plaintiff seeks the following relief against the defendants, jointly and severally:

1. That the Court declare ARTOFEX Assignments 2 through 4 invalid, and accordingly, defendants do not have any ownership rights in the mark.
2. That the Court declare the ARTOFEX mark was abandoned, and accordingly, defendants do not have any ownership rights in the mark.
3. That the Court declare the ARTOFEX mark was registered fraudulently, is invalid, and accordingly, defendants do not have any ownership rights in the mark.
4. That the Court enjoin defendants from prosecuting its pending application for trademark rights on ARTOFEX. S.N. 76/54438 and that such application be abandoned.

5. That the Court enjoin the defendants from disparaging plaintiff's company and products and breaching any agreements with plaintiffs and specifically the corporate settlement agreement.

6. That the Court award plaintiff damages and such other and further relief including punitive damages, costs, and legal fees as this Court may deem just and equitable.

Dated: July 13, 2005

JOEL & JOEL, LLP

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Excalibur Bagel & Bakery Equipment, Inc.

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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

RICHARD ZINN, Individually and as Sole
Shareholder of Excalibur Bagel & Bakery
Equipment, Inc., a New Jersey Corporation,
and Excalibur Bagel & Bakery Equipment,
Inc., a New Jersey Corporation

Plaintiffs,

vs.

KARIN SERUGA, Individually and as Sole
Shareholder of Excellent Bakery Equipment
Co., a New Jersey Corporation, and Excellent
Bakery Equipment Co., a New Jersey
Corporation

Defendants.

CASE NO. _____cv_____

**CERTIFICATION OF
RICHARD ZINN**

STATE OF NEW JERSEY)
) ss.:
COUNTY OF BERGEN)

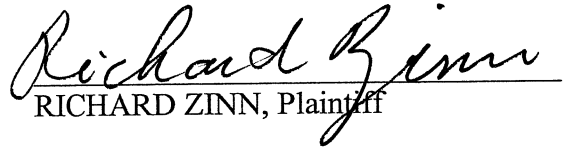
I, Richard Zinn, of full age, being duly sworn according to law, upon my oath, depose
and say:

1. I am the plaintiff in this suit and I am familiar with the facts stated in this
Complaint.
2. I have read the foregoing Complaint and on my own personal knowledge I know
the facts contained therein to be true and they are incorporated into this affidavit by reference.

3. I certify that the above statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

SWORN TO BEFORE ME
THIS 13TH DAY OF JULY 2005


NOTARY PUBLIC


RICHARD ZINN, Plaintiff

LINDA MARZLOFF
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES
JUNE 26, 2006

EXHIBIT 1



Assignments on the Web > Trademark Query

Trademark Assignment Abstract of Title

Total Assignments: 4

Serial #: 71246878

Filing Dt: 04/04/1927

Reg #: 0231276

Reg. Dt: 08/16/1927

Registrant: F. AESCHBACH S.A.

Mark: ARTOFEX

Assignment: 1

Reel/Frame: 0659/0910

Received:

Recorded: 07/13/1989

Pages: 0

Conveyance: ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL

Assignor: F. AESCHBACH AG

Exec Dt: 05/24/1989

Entity Type: A JOINED STOCK
COMPANY

Citizenship: SWITZERLAND

Entity Type: JOINT STOCK COMPANY

Citizenship: SWITZERLAND

Assignee: ARTOFEX AG

OBERFELDSTRASSE 342

CH-5722 GRANICHEN, SWITZERLAND

Correspondent: MARK HARRISON

SPENCER & FRANK

1111 NINETEENTH STREET, N.W.

WASHINGTON, DC 20036

Assignment: 2

Reel/Frame: 1352/0012

Received: 05/22/1995

Recorded: 03/20/1995

Pages: 5

Conveyance: ASSIGNS THE ENTIRE INTEREST

Assignor: ARTOFEX AG

Exec Dt: 02/28/1995

Entity Type: CORPORATION

Citizenship: UNITED KINGDOM

Entity Type: CORPORATION

Citizenship: UNITED KINGDOM

Assignee: ARTOFEX ENGINEERING WORKS LIMITED

720 GREAT CAMBRIDGE ROAD

ENFIELD, MIDDLESEX, UNITED KINGDOM EN1 3RW

Correspondent: KATHRYN L. BARRETT, ESQ.

WILLKIE FARR & GALLAGHER

ONE CITICORP CENTER

153 EAST 53RD STREET

NEW YORK, NY 10022

Assignment: 3

Reel/Frame: 2733/0248

Received: 10/17/2003

Recorded: 10/17/2003

Pages: 2

Conveyance: ASSIGNS THE ENTIRE INTEREST

Assignor: F. AESCHBACH, S.A.

Exec Dt: 10/15/2003

Entity Type: INDIVIDUAL

Citizenship: UNITED STATES

Entity Type: INDIVIDUAL

Citizenship: UNITED STATES

Assignee: KARIN SERUQA

315 FAIRFIELD ST

FAIRFIELD, NEW JERSEY 07004

Correspondent: DENNIS DEUTSCH, ESQ.

505 MAIN ST

HACKENSACK, NJ 07601

Assignment: 4**Reel/Frame:** 2841/0477**Received:** 05/04/2004**Recorded:** 05/04/2004**Pages:** 2**Conveyance:** ASSIGNS THE ENTIRE INTEREST**Assignor:** F. AESCHBAH S.A. JOINT STOCK COMPANY SWITZERLAND**Exec Dt:** 04/15/2004**Entity Type:** JOINT STOCK COMPANY**Citizenship:** SWITZERLAND**Entity Type:** INDIVIDUAL**Citizenship:** UNITED STATES**Assignee:** SERUGA, KARIN

315 FAIRFIELD STREET

FAIRFIELD, NEW JERSEY 07004

Correspondent: DENNIS S. DEUTSCH, ESQ.

505 MAIN STREET

HACKENSACK, NJ 07642

Search Results as of: 06/09/2005 10:58

If you have any comments or questions concerning the data displayed, contact OPR / Assignments at 703-308-9723

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EXHIBIT 2

FERRARA, TURITZ, HARRAKA & GOLDBERG

A Professional Corporation
Attorneys at Law
505 MAIN STREET
HACKENSACK, N.J. 07601

NEW YORK OFFICE:
630 THIRD AVENUE
SEVENTH FLOOR
NEW YORK, N.Y. 10017
(212) 233-2122

OF COUNSEL:
MICHAEL J. FERRARA
RICHARD H. INSLEY
CHARLES BARTEL (N.Y. BAR ONLY)
JAMES R. NORMAN

STANLEY TURITZ
DENNIS G. HARRAKA (CERTIFIED CIVIL TRIAL ATTORNEY)
ARTHUR I. GOLDBERG (N.J. AND N.Y. BAR)
DENNIS S. DEUTSCH (N.J., N.Y. FL. & PA. BAR)

MARLA WOLFE TAUS (N.J. AND N.Y. BAR)
DORIS BRANDSTATTER
LINA PAPALIA CORRISTON
EVA VIDAIC SIGNORE (N.J. AND N.Y. BAR)
MOSHE ORLINSKY

(201) 499-8787
FAX (201) 499-0880

DENNIS S. DEUTSCH
Direct e-mail
dennis.deutsch@fthglaw.com

December 8, 2003

VIA REGULAR AND CERTIFIED MAIL

Artofex Machine LLC
611 Valley Health Plaza
Paramus, NJ 07642

Re: Trademark: "Artofex"

Sir:

Please be advised that this office represents Karen Seruga, the owner of the United States registered trademark, "Artofex". The mark is owned by Ms. Seruga pursuant to an assignment recorded with the United States Patent and Trademark Office on October 17, 2003 with respect to Application Number 71246878; Registration Number 231276. It has been brought to our attention that you are using the mark, "Artofex" in commerce. You are doing so in violation of my client's rights under Federal Law.

You are directed to immediately cease and desist and further use of the mark, "Artofex" without my client's written approval. You are further directed to withdraw from use any unpublished uses of the mark you may have in progress. Should you use the mark in any legal manner you are directed to indicate that the mark is a registered U.S. trademark belonging to Karen Seruga.

FERRARA, TURITZ, HARRAKA & GOLDBERG

Pg.

My client reserves her right to sue for profits made by you for the improper use of the mark as well as any other damages to which she is entitled by law. Demand is further made that you provide this office with an accounting of income derived directly or indirectly as a result of your use of the mark, within thirty days.

Please be guided accordingly.

Very truly yours,

FERRARA, TURITZ, HARRAKA & GOLDBERG, P.C.

By:

Dennis S. Deutsch, Esq.

DSD/snn
cc: Karen Seruga

EXHIBIT 3

**Assignments on the Web > Trademark Query****Trademark Assignment Details****Reel/Frame:** 2841/0477**Received:** 05/04/2004**Recorded:** 05/04/2004**Pages:****Conveyance:** ASSIGNS THE ENTIRE INTEREST**Total properties: 2**

1	Serial #: <u>71246878</u> Mark: ARTOFEX	Filing Dt: 04/04/1927	Reg #: <u>0231276</u>	Reg. Dt: 08/16/1927
2	Serial #: <u>76545438</u> Mark: ARTOFEX	Filing Dt: 09/17/2003	Reg #: NONE	Reg. Dt:

Assignor**1** F. AESCHBAH S.A. JOINT STOCK COMPANY SWITZERLAND**Exec Dt:** 04/15/2004**Entity Type:** JOINT STOCK
COMPANY**Citizenship:** SWITZERLAND**Assignee****1** SERUGA, KARIN
315 FAIRFIELD STREET
FAIRFIELD, NEW JERSEY 07004**Entity Type:** INDIVIDUAL**Citizenship:** UNITED STATES**Correspondence name and address**DENNIS S. DEUTSCH, ESQ.
505 MAIN STREET
HACKENSACK, NJ 07642

Search Results as of: 08/09/2005 10:58 AM

If you have any comments or questions concerning the data displayed, contact OPR / Assignments at 703-308-9723

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EXHIBIT 4

207611
Trademark

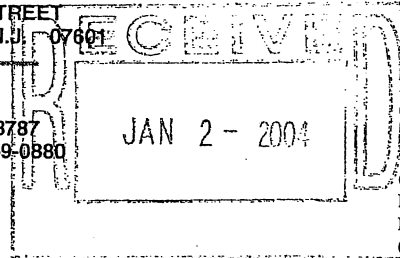
FERRARA, TURITZ, HARRAKA & GOLDBERG

A Professional Corporation

Attorneys at Law

505 MAIN STREET
HACKENSACK, N.J. 07601

(201) 489-8787
FAX (201) 489-0880



NEW YORK OFFICE:
630 THIRD AVENUE
SEVENTH FLOOR
NEW YORK, N.Y. 10017
(212) 233-2122

OF COUNSEL:
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JAMES R. NORMAN

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DENNIS S. DEUTSCH (N.J., N.Y. FL. & PA. BAR)

MARLA WOLFE TAUS (N.J. AND N.Y. BAR)
DORIS BRANDSTATTER
LINA PAPALIA CORRISTON
EVA VIDAIC SIGNORE (N.J. and N.Y. BAR)
MOSHE ORLINSKY

DENNIS S. DEUTSCH
Direct e-mail
dennis.deutsch@fthglaw.com

December 31, 2003

Via Telefax & US Mail

Suzanne J. Frankland, Esq.
Melli, Guerin & Melli
West 115 Century Road
Paramus, NJ 07652

Re: Seruga / Artofax Trademark

Dear Ms. Frankland:

I have reviewed your letter of December 23, 2003. Regardless of any rights which may exist with respect to the Corporate Settlement Agreement between the parties, I am certain that that agreement does not give your client the right to use the trademark "Artofax" in conjunction with counterfeit parts.

Your client's action of advertising using the name "Artofax" in conjunction with his sale of unauthorized replacement parts constitutes trademark dilution which, in and of itself, is actionable. We therefore stand by our previous letter and caution your client accordingly.

Very truly yours,

FERRARA, TURITZ, HARRAKA & GOLDBERG, P.C.

By: 

Dennis S. Deutsch, Esq.

DSD/snn

cc: Karin Seruga

EXHIBIT 5



[Trademarks](#) > [Trademark Electronic Search System \(TESS\)](#)

Trademark Electronic Search System(Tess)

TESS was last updated on Thu Jun 9 03:52:08 EDT 2005

[PTO HOME](#) [TRADEMARK](#) [TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [BROWSE DICT](#) [BOTTOM](#) [HELP](#) [PREV LIST](#) [CURR LIST](#) [NEXT LIST](#)
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[Logout](#)

Please logout when you are done to release system resources allocated for you.

[Start](#)

List At:

OR

[Jump](#)

to record:

Record 1 out of 3

Check Status

(TARR contains current status, correspondence address and attorney of record for this mark. Use the "Back" button of the Internet Browser to return to TESS)

ARTOFEX

Word Mark	ARTOFEX
Goods and Services	IC 007. US 013 019 021 023 031 034 035. G & S: machines for bakeries and confectioneries which include those for mixing and kneading as well as the parts and replacements for those machines. FIRST USE: 19270404. FIRST USE IN COMMERCE: 19270404
Mark Drawing Code	(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM
Serial Number	76545438
Filing Date	September 17, 2003
Current Filing Basis	1A
Original Filing Basis	1A
Owner	(APPLICANT) SERUGA, KARIN INDIVIDUAL UNITED STATES 315 FAIRFIELD STREET FAIRFIELD NEW JERSEY 07004
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Dennis Deutsch
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

[PTO HOME](#) [TRADEMARK](#) [TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [BROWSE DICT](#) [TOP](#) [HELP](#) [PREV LIST](#) [CURR LIST](#) [NEXT LIST](#)
[FIRST DOC](#) [PREV DOC](#) [NEXT DOC](#) [LAST DOC](#)

Case 2:05-cv-03572-GER-MCA Document 1 Filed 07/18/05 Page 29 of 46 PageID: 29
Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2005-06-09 10:03:49 ET

Serial Number: 76545438 Assignment Information

Registration Number: (NOT AVAILABLE)

Mark

ARTOFEX

(words only): ARTOFEX

Standard Character claim: No

Current Status: A non-final Office action is being typed. This is a letter from the examining attorney requesting additional information and/or making an initial refusal. However, no final determination as to the registrability of the mark has been made.

Date of Status: 2005-06-08

Filing Date: 2003-09-17

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 116

Attorney Assigned:
SNAPP TINA LOUISE Employee Location

Current Location: M70 -TMO Law Office 116

Date In Location: 2005-06-08

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. SERUGA, KARIN

Address:
SERUGA, KARIN
315 FAIRFIELD STREET
FAIRFIELD, NJ 07004
United States

Legal Entity Type: Individual**Country of Citizenship:** United States

GOODS AND/OR SERVICES

International Class: 007

machines for bakeries and confectioneries which include those for mixing and kneading as well as the parts and replacements for those machines

First Use Date: 1927-04-04**First Use in Commerce Date:** 1927-04-04**Basis:** 1(a)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2005-06-08 - Non-Final Action Written

2005-05-05 - Petition To Revive-Granted

2004-11-12 - Petition To Revive-Received

2004-12-09 - PAPER RECEIVED

2004-11-12 - PAPER RECEIVED

2004-11-15 - PAPER RECEIVED

2004-11-12 - PAPER RECEIVED

2004-10-27 - Abandonment Notice Mailed - Failure To Respond

2004-10-27 - Abandonment - Failure To Respond Or Late Response

2004-03-26 - Non-final action mailed

2004-03-25 - Case file assigned to examining attorney

2003-11-07 - Applicant amendment prior to exam entered

2003-11-07 - Communication received from applicant

2003-11-07 - TEAS Preliminary Amendment Received

CORRESPONDENCE INFORMATION

Correspondent

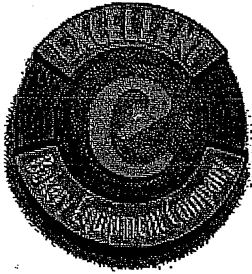
Dennis Deutsch (Attorney of record)

DENNIS DEUTSCH
FERRARA TURITZ HARRAKA & GOLDBERG, PC
505 MAIN STREET
HACKNESACK NJ 07601

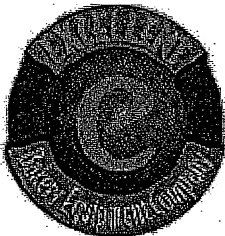
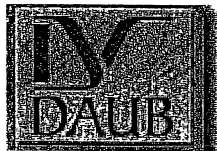
Phone Number: 201 489 8787

Fax Number: 201 489 0880

EXHIBIT 6



Click on the
manufacturer logo
below to see
equipment.



Equipment

Excellent reserves the right to
make any modifications or
changes in design and
engineering
to their products to the latest
technical standards without
prior notice.

Website edited &
maintained by James C.
Calaski

The Spirit of Excellence...

[[Artofex](#)] [[Back-Tech](#)] [[Daub](#)] [[Excellent](#)]

Welcome to Excellent Bakery Equipment, the **owner** of the
Artofex trademark for the USA and **exclusive representatives** for
Back-Tech and Daub equipment.

Excellent Bakery Equipment Company is the EXCLUSIVE US
representative of genuine and new Artofex mixers and parts. Do not be
fooled by claims from other companies. Click here for more information
regarding our status as the one and ONLY US company able to make this
claim. Updated February 27, 2004!

With a long tradition in the industry, Excellent moves into the next
millennium. As one of the foremost manufacturers and distributors of
bakery machinery for the largest wholesale bakers. We are also one of the
largest suppliers to the bagel, small bakery and food service markets.

To reach our goal of being the best, Excellent established an in-house
system which makes it possible to see and test our fine line of products.
You can see the process from scratch to finish at our showroom bakery or
any associated retail shop.

Our machinery is made in America, assuring you of readily available
parts and service to last a lifetime.

Whatever your needs, Excellent can supply complete packages, including
consulting and training. Known for its high level of integrity, Excellent
has become the best resource in the industry.

[[Artofex](#)] [[Back-Tech](#)] [[Daub](#)] [[Excellent](#)]

Excellent Bakery Equipment Co.
315 Fairfield Road Fairfield, NJ 07004
(973) 244-1664 Tel (973) 244-1696 Fax
or call toll-free

(888) BAGELS 1

(888) BAGELS 9

E-mail: staff@excellent-bagels.com

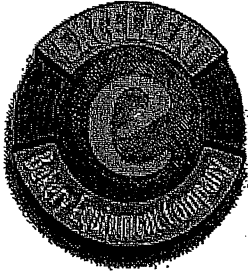
©1997 All Rights Reserved. Excellent Bakery Equipment Co.

EXHIBIT 7

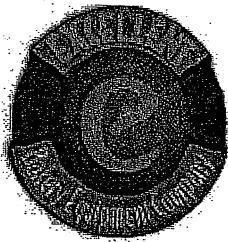
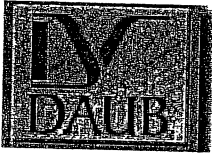
of products, parts, or services which they sell or offer for sale, or the manufacturer of said products or parts;

(f) Richard and Excalibur, and Karin and Excellent will not represent, state or imply, in any trade publication or otherwise, that they are offering for sale any equipment or parts manufactured by Artoflex or ^{By} any licensor of the Artoflex product or name unless said representations and statements are true in fact. However, each party shall be entitled to purchase, rehabilitate and sell Artoflex equipment; and shall be entitled to make, advertise and sell parts (using ~~TRIPLE ACTION MIXER AND OR THE DESIGNATION~~ the designation PH15, PH20, PH30), which can be used with or substituted for original Artoflex equipment, and both parties can ^{CAPABLE OF SERVICING} advertise that they are ~~available to service~~ Artoflex equipment as long as such statements are true. Richard agrees that in the event he or Excalibur violates this obligation, Karin and/or Excellent shall be entitled to enforce it and, in any proceeding brought with respect to alleged violation of this paragraph, the ~~Court shall have the power in its discretion to award~~ ^{Court} ~~losing party shall be responsible for the reasonable attorneys' fees and costs of the prevailing party.~~ Karin agrees that in the event she or Excellent violates this obligation, Richard and/or Excalibur shall be entitled to enforce it and, in any proceeding brought with respect to alleged violation of this paragraph, the ~~Court~~ ^{Court} ~~losing party shall be responsible for the reasonable attorneys' fees and costs of the prevailing party.~~ Nothing herein shall be

EXHIBIT 8



Click on the manufacturer logo below to see equipment.



Equipment

Excellent reserves the right to make any modifications or changes in design and engineering to their products to the latest technical standards without prior notice.

Website edited & maintained by James C. Calaski

The Spirit of Excellence...

Welcome to Excellent Bakery Equipment, the owner of the Artofex trademark for the USA and exclusive representatives for Back-Tech and Daub equipment.

Important Announcement From Excellent Bakery Equipment

Since 1995, two companies have advertised that they are both the **SOLE** US Agency of Artofex mixers and parts.

Two competing companies cannot be the sole US Agency of new genuine Artofex mixers and parts.

Two competing companies cannot have **exclusive** rights to represent genuine, new Artofex mixers and parts.

ONE OF THEM HAS BEEN LYING AND CONTINUES TO DO SO!

Since 1977, **Karin Seruga** of **EXCELLENT BAKERY EQUIPMENT** has been the one and only representative of the genuine Artofex manufacturer and has been the only Artofex distributor for the United States market.

The other company is simply lying and therefore defrauding the bakery industry by purporting to be "the one and only genuine Artofex manufacturer world-wide" and sell new Artofex mixers.

EXCELLENT BAKERY EQUIPMENT is the only company capable of selling all new Artofex models, including the PH8, PH15, PH20 and PH30 mixers and original Artofex replacement parts.

Please visit the links below to see copies of letters from the original Artofex manufacturers to support Karin Seruga's role as the sole agency for Artofex products in the USA.

You will also find a link to the "other company" to cease and desist from their claims that they are Artofex representatives.

Excellent Bakery Equipment wishes to thank you for your continued support.

- [Click here to view Trademark Registration and the latest updates.](#) This page contains a brief history of Artofex, the original

Artofex Trademark registration, the transfer of the Trademark to Karin Seruga, the new Trademark registration and a Cease and Desist Letter.

New! Updated December 2003.

- Click here to view a letter from PITEC to the "other company" again stating that Karin Sergua and Excellent Bakery Equipment is the only authorized Artofex representative in the United States.

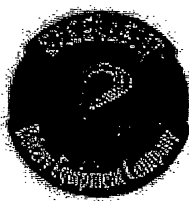
[Artofex] [Back-Tech] [Daub] [Excellent]

Excellent Bakery Equipment Co.
315 Fairfield Road Fairfield, NJ 07004
(973) 244-1664 Tel (973) 244-1696 Fax
or call toll-free
(888) BAGELS 1
(888) BAGELS 9

E-mail: staff@excellent-bagels.com

©1997 All Rights Reserved. Excellent Bakery Equipment Co.

EXHIBIT 9



Excellent

Bakery Equipment Co.

BAGEL • BAKERY • FOOD SERVICE EQUIPMENT

**WELCOME TO EXCELLENT BAKERY EQUIPMENT, EXCLUSIVE HOME
AND OWNER OF**

ARTOFEX USA

**REGISTERED TRADEMARK SERIAL NR.71246878
REGISTRATION NUMBER 231276**

CEASE AND DESIST ORDER

**BE ADVISED THAT ANYONE USING THE MARK "ARTOFEX" IN
COMMERCE IS DOING SO IN VIOLATION OF MY RIGHTS UNDER THE
FEDERAL LAW. I AM THE OWNER OF THE MARK PURSUANT TO AN
ASSIGNMENT RECORDED WITH THE UNITED STATES PATENT AND
TRADEMARK OFFICE ON OCTOBER 23, 2003 WITH RESPECT TO
APPLICATION NR.71246878 REGISTRATION NR.231276.**

**YOU ARE DIRECTED TO IMMEDIATELY CEASE AND DESIST AND
FURTHER USE OF THE MARK "ARTOFEX" WITHOUT MY WRITTEN
APPROVAL.**

**YOU ARE FURTHER DIRECTED TO WITHDRAW FROM USE ANY UN-
PUBLISHED USES OF THE MARK YOU MAY HAVE IN PROCESS.**

**I RESERVE MY RIGHT TO SUE FOR PROFITS MADE BY YOU FOR
IMPROPER USE OF THE MARK AS WELL AS ANY OTHER DAMAGES TO
WHICH I AM ENTITLED BY LAW.**

**KARIN SERUGA
OWNER**

Back to top

[Artofex] [Back-Tech] [Daub] [Excellent]

Excellent Bakery Equipment Co.
315 Fairfield Road Fairfield, NJ 07004
(973) 244-1664 Tel (973) 244-1696 Fax
or call toll-free

(888) BAGELS 1

(888) BAGELS 9

E-mail: staff@excellent-bagels.com

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EXHIBIT 10



Click on the
manufacturer logo
below to see
equipment.



Equipment

Excellent reserves the right to
make any modifications or
changes in design and
engineering
to their products to the latest
technical standards without
prior notice.

Website edited &
maintained by James C.
Calaski

The Spirit of Excellence...

Welcome to Excellent Bakery Equipment, the owner of the
Artofex trademark for the USA and exclusive representatives for
Back-Tech and Daub equipment.

pitec

Richard- und Gerhardstr. 11
Technique de boulangerie et pâtisserie
Bakery and Kitchen Technology

Gränichen,
Direktwahl:
E-mail:

24. April 1997
002 / 855 05 51
mcauser@pitec.ch

Re: ARTOFEX MACHINERY AND PARTS

Dear Sir,

We confirm and want to point out again that there is no change in the policy of our agency in the USA as to
the import and distribution of the ARTOFEX Products.

This business is and has been in the hands for many years and in continuous personal relationship of

Ms. Karin Seruga
Excellent Bakery Equipment Co.
315 Fairfield Road
Fairfield, New Jersey

Ms. Seruga stands and is during all these years alone and always in close contact with us and under the
same conditions as before she is authorized to import and distribute as a **SOLE AGENCY** the ARTOFEX
Products in the USA.

Nobody else is legally authorized to employ in any case or in any way the trademark ARTOFEX to import in
the USA these products and machines and parts.

We confirm this again to avoid legal action.

Yours Faithfully

PITEC Ltd.

[Signature]
Max Haesler
in charge of all Artofex Export Affairs

[Artofex] [Back-Tech] [Daub] [Excellent]

Excellent Bakery Equipment Co.
315 Fairfield Road Fairfield, NJ 07004

(973) 244-1664 Tel (973) 244-1696 Fax

or call toll-free

(888) BAGELS 1

(888) BAGELS 9

E-mail: staff@excellent-bagels.com

©1997 All Rights Reserved. Excellent Bakery Equipment Co.

EXHIBIT 11

Einrichtungen und Geräte für Bäckereien und Konditoreien

Installations et ustensiles pour boulangeries et pâtisseries

Oberfeldstrasse 13
Postfach
CH-5722 Graenichen
Tel. ++ 64 331122 A.Haller
FAX ++ 64 314124 A.Haller

Gränichen, 20. Oktober 1995

Registered
Messrs.
EXCALIBUR
Bagel & Bakery Equip. Inc
attn. Mr. Richard Zinn
611 Industrial Ave.
Paramus, NJ 07652
USA

RE: ARTOFEX MACHINERY AND PARTS

Dear Sir

We confirm our message of august 7th, 1995 and want to point out again, that there is no change in the policy of our agency in the USA as to import and distribution of ARTOFEX products.

This buidness is in hands since many years ago in continous persone1 relationsship of

Mrs. Karin Zinn
Excellent Bakery Equipment Co.
315 Fairfield Road
Fairfield New Jersey
USA

Mrs. Zinn stand and is during these many years alone always in close contact with us and under the same conditions as before she is authorized to import and distribute as a sole agency the ARTOFEX products in the USA.

Nobody else is legally authorized to employ in any case or any way the trade mark and ARTOFEX to import in the USA these products-machines and parts.

We confirm this again to avoid legal action

yours faithfully

KOLB / BAKO-SERVIE LTD.

A. Haller
A.Haller

in charge of all ARTOFEX export affairs